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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA) No. 3-09-70315-BZ(EMC)

V.

JULIO HERNANDEZ.

No. 3-09-70315-BZ(EMC)

STIPULATION AND [PROPOSED]
ORDER DOCUMENTING WAIVER

Defendant

With the agreement of the parties, and with the consent of the defendant, the Court enters this order vacating the preliminary hearing date of July 10, 2009, setting a new preliminary hearing date on July 24, 2009, at 9:30 a.m., before the duty magistrate judge, extending the time for the preliminary hearing under Federal Rule of Criminal Procedure 5.1, and excluding time under the Speedy Trial Act from the date of this stipulation to July 24, 2009. The parties agree and stipulate, and the Court finds and holds, as follows:

27 1. The defendant, Julio Hernandez, was charged in a complaint dated April 3, 2009
28 with one count of conspiracy to commit murder in aid of racketeering, one count of conspiracy to

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RICHARD W. WICKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 commit assault with a dangerous weapon in aid of racketeering, and one count of using or
2 possessing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. §§
3 1959(a)(5) and (a)(6), 924(c), and 2. Hernandez was transferred into federal custody on April 10,
4 2009, and presented to Magistrate Judge Maria-Elena James on that day. On April 14, 2009,
5 Hernandez appeared before Magistrate Judge Bernard Zimmerman and Gilbert Eisenberg, Esq.,
6 was appointed to represent him. The defendant waived his right to seek bail without prejudice to
7 any future bail applications, and Judge Zimmerman also scheduled a preliminary hearing date for
8 April 17, 2009. The defendant remains detained pending further proceedings.

9 2. Following the appointment of Mr. Eisenberg, the parties have been conferring
10 regarding possible dispositions of this matter, and as a result, the Court, at the request of both
11 parties, extended the preliminary hearing date to May 8, 2009, June 12, 2009, June 26, 2009, and,
12 most recently, July 10, 2009. Since then, the parties' have continued to pursue their discussions
13 with the goal of reaching a disposition prior to the filing of formal charges against the defendant
14 and the defense has also been conducting its own investigation. However, the parties have not
15 yet been able to finalize these discussions and the defense is still pursuing its own investigation.
16 Accordingly, the parties have asked the Court to extend the preliminary hearing date to July 24,
17 2009, pursuant to Federal Rule of Criminal Procedure 5.1, and excluding the time under the
18 Speedy Trial Act, 18 U.S.C. § 3161.

19 3. Taking into the account the public interest in the prompt disposition of criminal
20 cases, the above-stated ground is good cause for extending the time limit for a preliminary
21 hearing under Federal Rule of Criminal Procedure 5.1, for the filing period for an indictment, and
22 for excluding time under the Speedy Trial Act. Failure to grant the continuance would deny the
23 defense time for effective preparation and for seeking disposition of this matter on agreed-upon
24 terms.

25 4. Accordingly, with the consent of the defendant, the Court hereby: (a) vacates the
26 July 10, 2009 preliminary hearing date and extends the time for a preliminary hearing until July
27 24, 2009, before the duty magistrate judge, at 9:30 a.m.; and (b) orders that the period from the
28 date of this order to July 24, 2009 be excluded from the time period for preliminary hearings

1 under Federal Rule of Criminal Procedure 5.1 and from Speedy Trial Act calculations under 18
2 U.S.C. § 3161(h)(7)(A) & (B)(iv).

3 SO STIPULATED:

4
5 DATED: July 9, 2009

/s/
6 GILBERT EISENBERG, ESQ.
7 Attorney for JULIO HERNANDEZ

8 DATED: July 9, 2009

/s/
9 W.S. WILSON LEUNG
10 Assistant United States Attorney

11 IT IS SO ORDERED.

12 DATED: July 10, 2009

/s/
13 HON. EDWARD M. CHEN
14 United States Magistrate Judge